

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS ZEMANI, JAMES GROVES AND BRIAN FOLEY

Application No. 09/811,970

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences (BPAI) on January 30, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

1. A review of the Examiner's Answer mailed November 3, 2005, indicate that the answer does not fully comply with the headings as set forth under 37 CFR § 41.37 (c). Specifically, the heading "(8) *Evidence Relied Upon*" lacks the content pertinent to it. The Manual Of Patent Examining Procedure (MPEP) § 1207.02(A) (8th ed., Rev. 3, August 2005) states in part:

Briefs must comply with 37 CFR [§] 41.37, and all examiner's answers filed in response to such must comply with the guidelines set forth below.

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

...

(8) *Evidence Relied Upon*. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

The examiner states under the heading “(8) **Evidence Relied Upon**” in the answer that “No evidence is relied upon by the examiner in the rejection of the claims under appeal”, however the examiner relies upon the patents to Bowers (US 5,108,704) and Aysta et al. (US 5,264,184) in his § 102(b) and § 103(a) rejections of the appealed claims. Hence, these references should have been [be] listed under the heading (8). Correction is required.

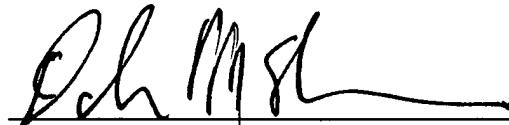
Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) to issue a revised Examiner’s Answer that complies with the requirements of heading “(8) *Evidence Relied Upon*” as noted above, and
- 3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

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